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91-1278
NO. _____

Supreme Court, U.S.
FILED
FEB 3 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1991

DR. MARK FELDMAN, PRO SE,

Petitioner,
vs.

STEPHEN GLUCROFT, M.D., STEPHEN GLUCROFT, M.D., P.A., JOEL DENNIS, M.D., JOEL DENNIS, M.D., P.A., LLOYD MORIBER, M.D., LLOYD MORIBER, M.D., P.A. MELVYN DRUCKER, M.D., MELVYN DRUCKER, M.D., P.A., KENNETH HODOR, M.D., KENNETH HODOR, M.D., P.A., ROBERT S. ENNIS, M.D., ROBERT S. ENNIS, M.D., P.A., HUGH UNGER, M.D., HUGH UNGER, M.D., P.A., and ORTHOPEDIC ASSOCIATES, P.A.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME
COURT FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
FROM A JUDGMENT FROM THE SUPREME COURT OF FLORIDA

DR. MARK FELDMAN, PRO SE,

15529 Bull Run Road
Miami Lakes, Florida 33014
(305) 557-8600

PETITIONER IN PRO SE

APPENDIX VOL II

APPENDIX A:

ORDER OF SUPREME COURT OF FLORIDA OF 11/5/91 WHICH DENIED PETITIONER'S PETITION FOR CERT.

APPENDIX B:

ORDER OF FLORIDA THIRD DISTRICT COURT OF APPEALS OF 7/11/91 DENYING MOTION FOR REHEARING

APPENDIX C:

OPINION OF FLORIDA THIRD DISTRICT COURT OF APPEALS OF 5/28/91 AFFIRMING SUMMARY JUDGMENT

APPENDIX D:

OPINION OF FLORIDA SUPREME COURT OF 2/4/88, CITED 522 So.2d 798 (FLA.1988) REMANDING CASE TO TRIAL COURT TO ALLOW AMENDED COMPLAINT

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EXCERPTS OF DEPOSITION TAKEN FOR TRIAL OF PETITIONER/PLAINTIFF'S EXPERT DR. SCHOENHAUS 8/8/90

APPENDIX H:

A COMPENDIUM OF STATE PEER REVIEW IMMUNITY LAWS

APPENDIX I:

DEPOSITION OF PLAINTIFF'S WITNESS DR. ROBERT RASKIN TAKEN FOR TRIAL 7/27/90

APPENDIX F

Mark H. FELDMAN, D.P.M., Petitioner,

v.

Stephen GLUCROFT, M.D., et al., Respondents.

No. 89-494.

District Court of Appeal of Florida, Third District.

Nov. 28, 1989.

Podiatrist brought defamation action against members of medical review committee. The Circuit Court for Dade County, Jack M. Turner, J., granted members' motion for summary judgment, and podiatrist appealed. The District Court of Appeal, 488 So.2d 574, affirmed, but the Supreme Court, 522 So.2d 798, vacated and remanded. On remand, the Circuit Court for Dade County, Jack Turner, J., dismissed new claims because podiatrist failed to post bond, and podiatrist filed petition for common law certiorari. The District Court of Appeal held that order partially settling pleadings was not subject to interlocutory appeal and was not proper matter for certiorari.

Petition denied.

FELDMAN v. GLUCROFT
CITE as 553 So.2d 282 (Fla.App 3 Dist. 1989)

Mark H. Feldman, in pro. per.

Tew, Jorden, Schulte & Beasley and Dan Paul and Steven M. Katzman, James J. Gilmour, Miami, for respondents.

Charles J. Powers, Fort Lauderdale, for the Academy of Florida Trial Lawyers as amicus curiae.

Robert A. Butterworth and Walter M. Meginniss, Tallahassee, for the State of Florida as amicus curiae.

Before NESBITT, FERGUSON and LEVY, JJ.

PER CURIAM.

This is a petition for common law certiorari. We deny the petition on jurisdictional grounds.

Petitioner Feldman brought a defamation action against members of a medical review committee. The circuit court granted the defendants' motion for summary judgment and the podiatrist appealed. This court affirmed, holding that a defamation action could not be maintained against medical review committee members and the hospital they serve due to the privilege established by section 768.40(4), Florida Statutes (1983), See Feldman v. Glucroft, 488 So.2d 574 (Fla. 3d DCA 1986).

FELDMAN v. GLUCROFT
CITE as 553 So.2d 282 (Fla.App 3 Dist. 1989)

1. **Appeal and Error** 80(6)
District Court of Appeal is not authorized to review order partially settling pleadings by way of plenary appeal unless motion to dismiss or strike is granted with respect to separate and distinct controversy.

2. **Appeal and Error** 80(6)
Order dismissing new claims due to plaintiff's failure to post bond was not subject to review by way of plenary appeal because claims dismissed did not represent controversies distinct from remaining viable claim.

3. **Certiorari** 7
District Court of Appeal may not entertain petition for writ of common law certiorari to review order partially settling pleadings.

4. **Certiorari** 5(2), 29
Petitioner for common law certiorari must demonstrate both departure from essential requirements of law and lack of adequate remedy by appeal after judgment.

5. **Certiorari** 5(2), 7
Circuit court order dismissing new claims due to plaintiff's failure to post bond was not proper matter for certiorari review; one claim remained viable and pending and there was adequate remedy by appeal after judgment was entered as to that claim.

FELDMAN v. GLUCROFT
CITE as 553 So.2d 282 (Fla.App 3 Dist. 1989)

Mark H. Feldman, in pro. per.

This court certified the question and the supreme court, in Feldman v. Glucroft, 522 So.2d 798 (Fla.1988), held that a defamation claim arising under that statute is not totally abolished since a plaintiff may proceed with such an action if he or she can establish extrinsic evidence of malice or fraud. Based upon that holding, the supreme court vacated the summary judgment issued in favor of the committee members and permitted Feldman to amend his complaint to allege extrinsic malice or fraud.

Thereafter, through an amended complaint, Feldman added new causes of action and new defendants to his claim. In response, the trial court required a bond to be posted by the plaintiff as to the new counts alleged. See 395.0115(5); 768.40(6), Fla.Stat. (1987). When this bond was not posted, the trial court dismissed these new counts. Plaintiff petitions this court for certiorari review claiming, in part, that because the cause of action accrued before enactment of the statutory bond requirement, that statute cannot be retroactively applied to his cause regardless of the new defendants and the new claims made. See Young v. Altenhaus, 472 So.2d 1152 (Fla.1985).

FELDMAN v. GLUCROFT
CITE as 553 So.2d 282 (Fla.App 3 Dist. 1989)

1,2 Because we deny the petition on jurisdictional grounds, we cannot reach the merits of petitioner's argument. Keehn v. Joseph C. Mackey & Co., 420 So.2d 398 (Fla. 4th DCA 1982). A district court is not authorized to review an order partially settling pleadings by way of plenary appeal unless the motion to dismiss or strike is granted with respect to a separate and distinct controversy. Mendez v. West Flagler Family Ass'n, 308 So.2d 1 (Fla.1974). In the case at hand, the claims dismissed did not represent distinct controversies and therefore must await disposition of the entire controversy.

The orders of dismissal, sought to be reviewed, do not affect Court III (defamation claim) and that cause of action remains pending in the trial court for disposition.

3-5 Neither may the district courts entertain a petition for a writ of common law certiorari to review an order partially settling a pleading--as is the situation in the present case. Even if petitioner is correct in contending that error occurred, there is an obvious, adequate remedy by appeal after judgment is entered on Count III, the remaining viable count of petitioner's complaint.

FELDMAN v. GLUCROFT
CITE as 553 So.2d 282 (Fla.App 3 Dist. 1989)

A petitioner for common law certiorari must demonstrate both a departure from the essential requirements of law and the lack of an adequate remedy by appeal after judgment. See Harte v. Palm Beach Biltmore Condominium Ass'n, Inc., 436 So.2d 444 (Fla. 4th DCA 1983); Chalfonte Dev. Corp. v. Beaudoin, 370 So.2d 58 (Fla. 4th DCA 1979). The order in question is not a permitted interlocutory appeal and is not a proper matter for certiorari.

Accordingly, certiorari is denied on jurisdictional grounds and the matter shall proceed below.

APPENDIX G

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 84-8615 CA 19

Florida Bar No. 341010

DR. MARK FELDMAN, PRO SE,
Plaintiff

vs.

STEPHEN GLUCROFT, et al.,
Defendants

Wednesday, August 8, 1990

VIDEOTAPED pretrial examination of DR. HAROLD D. SCHOENHAUS, taken pursuant to notice at the office of DR. HAROLD D. SCHOENHAUS, 7915 Frankford Avenue, Philadelphia, PA. 19136, commencing at about 2:15 p.m., before AARON BERKOWITZ, RPR-CM.

BRAD TRATENBERG REPORTING SERVICE
Registered Professional Reporters
Suite 315 - 117 S. 17th Street
Philadelphia, Pennsylvania 19103
(215) 496-0218

Q. Dr. Schoenhaus, you mentioned a chapter in a book on rear foot surgery utilizing a selastic plug.

Which text is that, sir?

A. In a text by Mercado, M-E-R-C-A-D-O, titled "An Atlas of Foot Surgery," Volume 2, rear foot surgery, the particular procedure which I've been utilizing since the early Seventies, which is selastic implants in the foot to control flat foot conditions, there is a -- an area which has been designated "The Schoenhaus Plug," which is part of the chapter on flat foot surgery.

Q. Firstly, if you would explain to the jury, utilizing the model, what the subtalar joint arthroereisis is?

A. The subtalar joint is a major joint in the back part of the foot which is comprised of two bones; the heel bone and the bone that sits above it, which is called the talus, which is actually one of the bones of the ankle. The joint connecting these two bones are referred to as the subtalar joint.

In patients who have severe flat feet, often referred to as uncontrollable hypermobile flat foot, we find a sliding of one bone on the other, obliterating and eliminating a canal which sits between the two bones.

It has been found that by blocking the canal with the placement of selastic, such as what we see here, into the canal, will physically block or prevent the top bone from sliding down on the bottom bone. By preventing the top bone from sliding down, we support or hold up the arch of the foot.

Q. Dr. Schoenhaus, have you perform that procedure?

A. I have performed that procedure at least 3 to 400 times, could be as high as 500.

Q. And starting when, sir?

A. I began performing the procedure in 1971, or '72.

Q. You can now answer the question, and that question is, was that an unproven experimental procedure in 1976 or '77?

A. No, it was not.

Q. And on what basis do you make the -- and on what basis do you have for your opinion that that procedure was not unproven experimental in 1976?

A. The use of a procedure which would block the motion between two bones had been developed many, many years before the 70's. 1950's for example, Grice-Green talked about the use of bone placed within this canal to actually block the motion.

LeLievre, in an article written in 19, I believe, 70, talks about the procedure that he had been performing for approximately 11 years utilizing bone to block the motion. So the concept of blocking motion between these two bones had been easily established many years before.

The use of selastic as a material had also been employed in the foot in various locations such as the big toe joint for joint replacement procedures, and had it been determined that selastic was a material that the body did not react to, and more

importantly, selastic is a material that will not create a fusion between these two bones.

One of the problems in using bone to block motion between two other bones is the risk of a fusion of the entire unit, thereby eliminating motion.

Selastic being an inert substance, was very adaptable for use within the canal of the sinus tarsi, which that canal is called, to block the motion, and in the 1970's, in the beginning, 1971, the use of selastic in that canal had begun to have been used. A number of podiatric surgeons throughout the United States, in various locations, had used selastic as a material, either carving it from a block, using a section of a penile implant cut to the appropriate size, or even taking the stem from the total -- from the implant of the big toe joint and placing it in that canal to block motion.

So the foundation of using this procedure had been well established by that time and the results had been well evaluated to determine that this was an excellent procedure in the

control of flat foot.

Q. Doctor, I show you an article by Gene LeLievre, M.D. published in Clinical Orthopaedics and Related Research in 1970, and ask you if this is the doctor in the article that you referred to.

A. Yes, this is the article.

Q. Did Dr. Feldman tell you what -- what sort of thing he was looking for you to say?

A. We discussed the fact that a procedure that had been performed for a good number of years was taken away from him -- excuse me -- and quite frankly, I was somewhat alarmed, concerned, maybe even outraged, that the process that has been done and the removal of the type of procedure by a podiatric surgeon had taken place.

Furthermore, that fact that a decision had

been made that an orthopaedic surgeon could perform that procedure using selastic, but not a podiatric surgeon, was even more irritating, because it seemed at that point now, we're talking not necessarily that the procedure itself was in question, but the fact that a podiatric surgeon was performing that procedure.

Q. Did that bother you?

A. Absolutely.

Q. Why?

A. A three-year trained podiatric surgeon is probably the most highly trained surgeon of the foot in this country.

Utilizing a procedure that I personally had performed for approximately four to five years prior to that time, understanding and evaluating the effectiveness of it, even to the extent that this procedure is one of the most recognized today in the podiatric surgical community as an indicated and warranted procedure, which has certainly served the test of time, indicating to me that the amount of information we had accumulated in '76 was

accurate and sufficient enough to have allowed that qualified podiatric surgeon to be able to perform that procedure, and then to have an orthopedist review it, determine that one, it was experimental, but two, they were allowed to perform it but not a podiatric surgeon, is just ludicrous.

APPENDIX H

A COMPENDIUM OF

STATE
PEER
REVIEW
IMMUNITY
LAWS

Public Affairs Group
Lee J. Stillwell, Vice President

Division of Legislative Activities
Ross N. Rubin, J. D., Director

Department of State Legislation
Shirley D. Rivers, J. D., Director
Jeffery M. Stokols, J. D., Assistant Director
Hilary E. Lewis, J. D.
Nancy K. Bannon, J.D.

FOREWARD

All fifty states and the District of Columbia have enacted peer review statutes which provide immunity, in varying degrees, to those who participate in the medical peer review process. Peer review statutes generally also provide for non-discoverability of the committee's proceedings, findings and records, and the inadmissibility of such as evidence in judicial or administrative proceedings. While the majority of these laws address peer review proceedings with respect to a variety of health care providers, this report focuses on committees which evaluate physician services, behavior and performance.

This Compendium was prepared by Hilary E. Lewis, Legislative Attorney in the AMA Department of State Legislation.

Shirley D. Rivers

SUMMARY

Persons Covered by Immunity: The individuals exempt from liability for good faith actions taken within their statutorily authorized duties usually include members of peer review committees, consultants to, or employees of peer review committees, and persons providing information to such committees.

Types of Committees Covered: The state statutes generally pertain to peer review committees formed by medical societies, as well as to those bodies created by a hospital or medical staff.

Responsibilities of Committees: The various statutory duties of peer view committees, the functions they perform under state law, and the degree to which these activities are subject to the immunities provided are addressed in the statutory provisions. The language varies from state to state.

Non-discoverability and Confidentiality: The proceedings and records of peer review committees typically are confidential and non-discoverable. In the statutes of twenty-two states, an important clarification states that information documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil action against a health care provider arising out of the matters which are the subject of evaluation and review by the committee merely because they were presented during proceeding of the peer review committee.

continues

In addition, any person who testifies before such a committee, or who is a member of such committee, may not be prevented from testifying as to matters within his knowledge, but such witness cannot be asked about his testimony before the committee or about opinions formed by him as a result of such proceedings. The following state laws contain this provision: Alaska, Arkansas, Florida, Georgia, Indiana, Kentucky, Massachusetts Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia and Wisconsin.

An exception that is present in the peer review non-discoverability provisions of a number of state laws permits a physician to obtain access to peer review materials when challenging the curtailment, suspension, termination or denial of staff privileges. Examples of state statutes which contain this exception are: Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, Oregon, Rhode Island, South Dakota and Washington.

COMPARISON CHARTS - OVERVIEW

All fifty states have enacted peer review statutes which provide immunity, in varying degrees, to those who participate in the peer review process. The following charts focus on several issues addressed by these laws.

The first chart, Persons Covered By Immunity Provisions, reflects an analysis of the laws with respect to persons covered by the immunity provisions. Individuals exempt from liability for good faith actions taken within their statutorily authorized duties include members of peer review committees, consultants to, or employees of peer review committees, and persons providing information to such committees.

The second chart, Entities Whose Committees Are Covered By Immunity provisions, notes that these state statutes pertain to peer review committees formed by medical societies as well as to those bodies created by the hospital or medical staff.

The final chart, Statutory Responsibilities of Peer Review Committees, explores another aspect of the peer review immunity laws. The analysis presented highlights the various statutory duties of peer review committees through a focus on the functions they perform under state law, which activities in turn are subject to the immunities provided.

PERSONS COVERED BY IMMUNITY PROVISIONS

State	Member of Committee	Consultant to, or Employee of Committee	Person Providing Information to Committee
Alabama	X	X	
Alaska	X	X	X
Arizona	X	X	X
Arkansas	X		
California	X	1	
Colorado	X		2
Connecticut	X		X
Delaware	X		X
District of Columbia	X		X
Florida	X	X	3
Georgia	X	X	X
Hawaii	X		
Idaho	X	X	X
Illinois	X	X	
Indiana	X	X	X
Iowa	X	X	X
Kansas	X		
Kentucky	X	X	
Louisiana	X		X
Maine	X		
Maryland	X	X	X
Massachusetts	X	X	X
Michigan			X
Minnesota	X	X	X
Mississippi	X		X
Missouri	X	X	X
Montana	X	X	X
Nebraska	X	X	
Nevada			
New Hampshire	X	X	
New Jersey	X		
New Mexico	X	X	X
New York	X		X
North Carolina	X		
North Dakota	X		4
Ohio	X	X	X
Oklahoma	X		X
Oregon	X		X
Pennsylvania	X	X	X
Rhode Island	X		X
South Carolina	X		
South Dakota	X	X	
Tennessee	X		X
Texas	X		X
Utah	X		X
Vermont	X		
Virginia	X	X	
Washington	X	X	X
West Virginia	X		X
Wisconsin	X	1	
Wyoming	X		

1 - Anyone who participates.
2 - Witness before committee.
3 - Health care provider.
4 - Physician, hospital or institution.

COMMITTEES COVERED BY IMMUNITY PROVISIONS

State	Medical Society	Hospital or Medical Staff
Alabama	X	X
Alaska	X	X
Arizona	X	X
Arkansas	X	
California	X	X
Colorado		X
Connecticut	X	X
Delaware	X	X
District of Columbia	X	X
Florida	X	X
Georgia	X	X
Hawaii	X	X
Idaho	X	X
Illinois	X	X
Indiana	X	X
Iowa	X	X
Kansas	X	X
Kentucky	X	X
Louisiana	X	X
Maine	X	X
Maryland	X	X
Massachusetts	X	X
Michigan	X	X
Minnesota	X	X
Mississippi	X	X
Missouri	X	X
Montana	X	X
Nebraska	X	X
Nevada	X	X
New Hampshire	X	X
New Jersey	X	X
New Mexico	X	X
New York	X	X
North Carolina	X	X
North Dakota	X	X
Ohio	X	X
Oklahoma	X	X
Oregon	X	X
Pennsylvania	X	X
Rhode Island	X	X
South Carolina	X	X
South Dakota	X	X
Tennessee	X	X
Texas	X	X
Utah	X	X
Vermont	X	X
Virginia		X
Washington	X	X
West Virginia	X	X
Wisconsin	X*	X*
Wyoming	X	X

*"All organizations reviewing or evaluating the services of health care providers...." (Wis. Stat. §146.38(2))

STATUTORY RESPONSIBILITIES OF PEER REVIEW COMMITTEES

STATUTORY RESPONSIBILITIES	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas
To evaluate the discipline of [illegible] of [illegible]	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X
To develop criteria or apply the professional or medical standards of quality that [illegible]																	
To evaluate and improve the quality of health care rendered in the area of medical specialty	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X
To obtain and disseminate statistics and information relative to [illegible] and prevention of diseases, illness and [illegible]																	
To develop and publish guidelines which the users of health care [illegible]	X	X	X				X	X	X	X	X		X	X		X	X
To develop and publish guidelines designed to keep the cost of health care reasonable																	
To review the quality or cost of health care services	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
To act as PSRO or PRO		X															
To review, rule on, or advise on controversies, disputes or questions between insurers, insureds, licensing boards, licensees, providers, patients, Government		X			X												
To perform credential review, or to act on the recommendation of candidates for review or privileges																	
To act on the review of privileges recommended for the purpose of [illegible] health care privileges																	
To review and investigate the conduct of licensees to determine if [illegible] to warrant																	

STATUTORY RESPONSIBILITIES OF PEER REVIEW COMMITTEES (Continued)

STATUTORY RESPONSIBILITIES	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carol.
To evaluate the diagnosis or treatment or performance of other physicians	X			X	X	X	X	X	X	X	X		X	X	X		
To perform utilization review			X	X		X	X		X	X	X			X	X	X	
To define, maintain or apply the professional or medical standards of entity that appointed it					X	X	X		X								
To evaluate and improve the quality of health care rendered in the area or medical institution			X	X	X		X	X	X	X	X		X	X	X	X	
To reduce morbidity or mortality							X			X							
To obtain and disseminate statistics and information relative to treatment and prevention of diseases, illness and disorders						X											
To develop and publish guidelines showing the norms of health care in various or medical institution							X										
To develop and publish guidelines designed to keep the cost of health care in reasonable bounds						X	X										
To review the quality or cost of health care services				X			X										
To act as PSRO or PPI	X	X	X	X	X	X	X	X	X	X	X						
To review, rule on, or advise on controversies, disputes or questions between insurers, insureds, licensing boards, licensees, providers, patients, government							X							X			
To perform credential review, or to act on the recommendation of credential review or private committee for the purpose of addressing issues such as those relative to staff privileges		X															
To review and investigate the conduct of licensees to determine if disciplinary proceedings			X														

STATUTORY RESPONSIBILITIES OF PEER REVIEW COMMITTEES (Continued)

STATUTORY RESPONSIBILITIES	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
To evaluate the provision of professional services	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
To perform utilization review		X	X	X	X	*	X	X	X	X	X	X	X	X	X	X	X
To develop, maintain or apply the professional or medical standards of care that should be met					X	X	X	X	X	X		X					
To evaluate and improve the quality of health care rendered in the area or medical institution		X			X	X		X	X		X	X	X	X	X	X	
To review mortality or morbidity			X		X			X			X						
To obtain and disseminate statistics and information relative to treatment and prevention of diseases, illness and injuries			X								X						
To develop and publish guidelines showing the norms of health care in the area of medical specialization																	
To develop and publish guidelines designed to keep the cost of health care reasonable/within bounds					X										X		
To review the quality of cost of health care services			X					X	X							X	X
To act as PSRO or PRO			X			X	X	X	X	X	X	X	X	X	X	X	X
To review, rule on, or advise on controversies, disputes or questions between insurers, insureds, licensing boards, licensees, providers, patients, governments					X												
To perform credential review, to act on the recommendation of credential review or grievance committee for the purpose of disciplining, issues such as those related to staff privileges			X	X									X	X			
To review and investigate the conduct of licensees to determine if disciplinary action is warranted	X		X	X						X*					X	X	X

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APPENDIX I

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

MARK FELDMAN, Pro Se

Plaintiff,

-vs- Case No.: 84-08615 CA 19

STEVEN GLUCROFT, et al,

Defendants.

Deposition of DR. ROBERT RASKIN taken under the provisions of the Michigan Court Rules before Marjorie A. Covey, (CSR 2616), Certified Shorthand Reporter and Notary Public, at Sheraton Hotel, Kalamazoo, Michigan on Friday, July 27, 1990 at 9:00 o'clock a.m. pursuant to Notice.

APPEARANCES:

FOR THE PLAINTIFF:

MR. MARK FELDMAN
899 NW 214 Street,
Suite #101
North Miami, Florida
33169

FOR THE DEFENDANTS:

MS. IRMA REBOSO SOLARES
701 Brickell Avenue
Miami, Florida 33131

FOR FIRST STATE INSURANCE COMPANY:

MR. SAMUEL S. LEWIS
2950 Southwest 27th Avenue
Coconut Grove
Miami, Florida 33131

FOR DR. ROBERT RASKIN:

MR. ROBERT TIMMONS
180 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503

VIDEO OPERATOR:

MR. BROCK HOWLAND

O'BRIEN & BAILS
Certified Shorthand Reporters
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1-800-262-4946

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EXHIBITS

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PROCEEDINGS

VIDEO OPERATOR: We're on the record at 9:01 a.m.

DR. ROBERT RASKIN,

called as a witness herein, having been first duly sworn testified upon his oath as follows:

EXAMINATION

BY MR. FELDMAN:

Q. Dr. Raskin, for the benefit of the Jury, would you state your name, please, sir?

A. Robert Benjamin Raskin.

Q. And your occupation?

A. Physician.

Q. Your current professional address?

A. Is 7000 Portage Road, Portage, Michigan, with The Upjohn Company.

Q. And would you give the Jury the benefit of your background, training and experience?

A. Well I received my medical degree in 1960, and following a one-year internship in Miami, Florida, I was general medical officer in the U.S. Navy for 2 years. 1963 to 1966, I took a residency in the department of neurology at Jackson Memorial Hospital, Miami, Florida. And thereafter until 1980 I was in the private practice of neurology in North Miami Beach, Florida.

Q. From what years were you in practice in neurology in North Miami Beach?

A. 1966 to 1980.

Q. And where was your office during those years?

A. 163rd Street. My letter office was at the Parkway Hospital Medical Building.

Q. In the Parkway Medical Plaza?

A. That's correct.

Q. And that's adjacent to Parkway Hospital?

A. Correct.

Q. Have you published any papers in neurology?

A. No. I have not.

Q. And your present position?

A. Clinical research manager, the unit of psychopharmacology with the Upjohn Company.

Q. Would you tell the Jury what that is, what that entails, basically?

A. Well that entails drug development, prior to its being marketed, to assess the drug for its utility in whatever area it might be indicated as well as its safety profile.

Q. And how long have you held this position?

A. For 10 years.

Q. Do you deal only in drugs that deal with neurological diseases, or any disease?

A. Primarily psychiatric illness.

Q. While you were in Miami from 1966 to 1980, what hospital staffs did you have privilege at?

A. At Parkway General Hospital, North Miami General Hospital, North Shore Hospital, Baptist Hospital, Jackson Memorial Hospital, that's about it.

Q. Were you on the teaching faculty at Jackson in any capacity?

A. Yes. I was an instructor in the department of neurology from 1966 to 1968.

Q. When you were in private practice were you solo or did you have a partner?

A. I had no partners, I had 2 younger men I took in with me in an office sharing agreement.

Q. And this was in which building?

A. The Parkway Medical Plaza.

Q. Who were they?

A. Dr. Vaughn Cohan, C-o-h-a-n, and Dr. Barry Cutler, C-u-t-l-e-r.

Q. As I understand it you were on Parkway's staff from 1966 to 1980?

A. Correct.

Q. During those years, what committees were you a member of, if any?

A. Well I clearly remember the audit committee, the executive committee, I know there were others, I can not recall specifically.

Q. I realize this is 1990 and this goes back some distance. Were you ever a member of the board of trustees at Parkway?

A. No.

Q. Were you ever a member of the joint conference committee?

A. No.

Q. The bylaws committee?

A. No.

Q. Credentials and qualifications committee?

A. I was on so many hospital staffs and on so many committees I don't recall if I was on the Parkway committee.

Q. Just, I understand sir, if you just try to the best of your recollection that will be fine. I think I can save you some time by asking you to try to recount what committees you were on at both Parkway and North Miami General. So if you were on, for example, if you were on the audit committee at Parkway, as you recall you were, and you were not on the audit committee at North Miami General, as best you can recollect, please say so. So with that frame work were you ever on the audit committee at North Miami General?

A. I don't recall.

Q. And the executive committee at North Miami General?

A. Yes, I was on that committee.

Q. Were you on the board of trustees at North Miami General?

A. No, sir.

Q. The joint conference committee at North Miami General?

A. No, Sir.

Q. How about the credentials and qualifications at North Miami General?

A. I don't recall.

Q. The bylaws at North Miami General?

A. No.

Q. Any other committee that you can recall?

A. No.

Q. At either hospital?

A. No. sir.

Q. When were you told about -- scratch that question. When was the first time you had contact with me, to the best of your recollection?

A. Person --

MR. TIMMONS: Before you answer, Doctor, if we're talking about outside of any peer review, which of course is privileged and for the record we are asserting that privilege, the doctor may answer. If you had contact which was extrinsic to any committee meeting, the doctor may answer. But if we're getting into the area of contacts between Dr. Raskin, my client, and Dr. Feldman that pertains to the peer review or the committees he was on at Parkway General, then I'll assert the privilege and instruct the doctor not to answer.

MR. FELDMAN: For the record you will please put on the record who you are and who you represent.

MR. TIMMONS: My name is Robert Timmons, I represent Dr. Raskin.

MR. FELDMAN: Dr. Raskin is not a defendant in this lawsuit, so do you represent Dr. Raskin through AMI, or do you represent Dr. Raskin as his personal attorney?

MR. TIMMONS: I represent Dr. Raskin in this deposition, Dr. Feldman. It's unclear to me whose privilege it is, whether it's a shared privilege or not, but to the extent it's Dr. Raskin's privilege, he is asserting it. And the judge will have to decide, I guess.

MR. FELDMAN: We need to certify that. Then I'll repeat the question.

Q. When was the first time in your memory you had contact with me?

MR. TIMMONS: Outside of peer review, Doctor.

A. That would have been a telephone call a few years ago, and I don't recall a year.

Q. Do you recall the content of the conversation?

A. Yes.

Q. Would you tell the Jury what the content of that conversation was?

A. You told me that you were representing yourself in a suit against the, I guess the orthopedists, who attempted to keep you or prevent you from performing a podiatric or orthopedic procedure.

Q. Anything else about that that you can recall?

A. Not the original call, no.

Q. And subsequent to that original call?

A. That would have been last week.

Q. And do you recall the content of that conversation?

A. I do.

Q. Please tell the jury what it was.

A. Well you again reiterated your serving as your attorney in this suit against the orthopedists and the hospital I presume, for keeping you off, or preventing you from performing these surgical procedures.

Q. Do you recall may telling you that the hospital was not a defendant in this case?

A. No, not specifically. I assumed they were.

Q. Do you recall my telling you that you were not a defendant in this case?

A. Yes.

Q. Okay. Do you recall my telling you that the reason I did not sue you or the hospital was that I did not intend to hold the hospital or you or anyone else other than the orthopedic surgeons, responsible for the acts of which I complained in this lawsuit?

A. I remember you telling me that I was not named in the suit. I don't recall the hospital though, I assumed they were.

Q. Has anyone told you that the hospital is a defendant in this lawsuit?

A. I remember seeing AMI in print somewhere, possibly -- no, no, that was the records from the executive committee that I reviewed, no.

Q. Do you recall my telling you that this lawsuit dealt with the orthopedic surgeons having labeled a surgical procedure that I did on a child as experimental?

A. Yes.

Q. And that that was the subject of this lawsuit?

A. That's correct.

Q. And that the procedure in fact, as I have, at least I related to you, was not experimental, but that it was designed by orthopedic surgeons in the 1920's?

A. Yes, sir.

Q. And that the orthopedic surgeons used you as a conduit to remove my privileges to do the procedure, which I in fact had when I did it?

MR. TIMMONS: So the record is clear, Dr. Feldman, you are asking Dr. Raskin to repeat what you told him in a phone conversation a week or 2 ago?

MR. FELDMAN: Yes.

MR. TIMMONS: Okay.

MR. FELDMAN: If he recalls my telling him

these facts on the telephone.

MR. TIMMONS: Okay, fine.

A. If by conduit you mean I was chairman of the committee and it was my responsibility to act on the recommendations of the committee members, then in that sense I was a conduit.

Q. Yes. When is the next time we came in contact together? When is the next time you heard from me, after that second conversation?

A. There was a third call prior to your coming to Kalamazoo, as I recall.

Q. Would you tell the Jury the content of that conversation as you remember it?

A. Well you basically inquired as to the availability of the local motels. I can't recall the specifics of the conversation, other than that.

Q. And you recall offering to pick me up at the airport and, you'll have to say yes for the court reporter.

A. I did.

Q. As opposed to shaking -- and that we could spend about an hour together talking about the lawsuit?

A. That's correct.

Q. And when I arrived in Kalamazoo you did in fact pick me up at the airport?

A. Yes, sir.

Q. And with respect to the hour we were supposed to spend together, do you recall what you told me?

A. Yes. I spoke to Mr. Timmons, who is representing me, who advised me not to speak with you in regards to the deposition.

Q. Do you recall telling me that Mr. Timmons represents AMI, that you got a call from him?

A. That was my understanding at the time.

Q. I'd like to take you back to your time spent at, on the staffs of Parkway General Hospital, during the period from 1974 until the time that you left in 1980. Other than within inside the committee room that you were either on as chairman or served in any capacity, do you ever recall hearing my name?

A. No.

Q. At North Miami General, the same question?

A. Same question -- same answer, rather.

Q. Were you ever called to any committee to appear before any committee at Mt. Sinai Hospital to talk about the procedure that's in question here, or Dr. Feldman?

A. At Mt. Sinai Hospital?

Q. Yes, sir.

A. I have no recall of that.

Q. The same question with respect to North Miami General?

A. I have no recall of that.

Q. With respect to Parkway, did you ever testify before any committee about me other than the committees that you actually served on?

A. No, sir.

Q. Do you know what the initials JCAH stand for?

A. Joint Commission on Accreditation for Hospitals.

Q. And to your knowledge what is that body?

A. This is a body that oversees the way the hospitals are run.

Q. And during the years you were at Parkway and North Miami General and all the hospitals that you were on, did you ever have occasion to read the guidelines for the Joint Commission on Hospital Accreditation?

A. No, sir.

Q. Did you ever read the bylaws of Parkway?

A. Yes, I did.

Q. And I want to show you a document which will be Plaintiff's 1.

MR. FELDMAN: Counsel?

Q. This document is entitled Parkway General Hospital memorandum, to podiatrists applying for staff privileges, date January, 1974, from Philip W Leeber, L-e-e-b-e-r, executive director, subject, addition to staff bylaws and ask you if, pardon me -- it says the following addition to the bylaws, rules and regulations

of the medical staff of Parkway General Hospital was approved at the quarterly staff meeting held on December 18, 1973. And ask you if you've ever seen this document before?

A. I don't remember it.

Q. I'd like to draw your attention to section 4.65-3 that says the scope and extent of surgical procedures and treatments that each podiatrist may perform shall be specifically delineated and granted in the same manner as all other surgical privileges. I'd like you to refer to that for a minute.

I'd like to show you a document entitled North Miami General Hospital, Medical Staff Bylaws, revised February 28, 1974, page 10 of 39, section E.

MR. FELDMAN: Counsel?

MR. TIMMONS: What's the date?

MR. FELDMAN: The date is on the outside. (Plaintiff's Exhibit Number 1 marked.)

Q. And I'd ask you to refer to that, sir. Would you read that to the Jury, please?

A. Privileges granted to licensed podiatrists shall be based on their training, experience and demonstrated competence and judgement. The scope and extent of surgical procedures that each podiatrist may perform shall be specifically delineated and granted in the same

manner as all other surgical privileges. Podiatric surgical procedures undertaken must be under the overall supervision of the chief of surgery. A physician member of the medical staff must be responsible for the care of any medical problem that may be present or which may arise during hospitalization. The podiatrist is responsible for the podiatric care of the patient including the podiatric history and physical examination and all appropriate elements of the patient's records. The podiatrist may write orders within the scope of his license, as limited by the applicable statutes and as consistent with the medical staff regulations. He shall agree to comply with all applicable medical staff bylaws, rules and regulations, at the time of application for clinical privileges. The delineation and granting of clinical privileges for a podiatrist shall be accomplished in a manner consistent with the overall procedure established for the medical staff as detailed in article 5 of the rules of procedure for corrective action as detailed in article 7, and the hearing procedure and appeal mechanism detailed in article 8.

Q. Thank you, sir. Doctor, as you understand it what is the purpose --

MR. LEWIS: Excuse me, I'm going to move to

strike his last reading of some unpredicated publication, I don't know what you gave him there, but ask him to qualify, and he, just to read it into the record, I guess I'll object to the form because it wasn't even a question to begin with.

Q. Doctor, as you understand it, what is the purpose of hospital bylaws?

A. To insure that the physicians on staff are appropriately trained and experienced in those areas in which they hope to perform as physicians.

Q. Are doctors permitted to act outside of the bylaws in what they do within the hospital?

A. What do you mean by act outside of it?

Q. Do the doctors on staff have to follow the rules and regulations of the bylaws?

A. Surely.

Q. And the rules and regulations spell out specifically what they must do?

A. I would only take issue with word specifically. For the most part that's correct.

Q. They are in other words the procedures to be followed, is that a fair assessment?

A. Yes.

Q. Within the hospital?

A. Yes.

MR. LEWIS: Object to the form, leading.

Q. You stated that you were on the medical record and audit committee at Parkway. Do you recall the years?

A. '77, '78, somewhere in there.

Q. As you understand the purpose of that committee, what is it?

A. Well it had a number of various functions, medical records to insure that physicians having responsibility to complete medical records on all admitted patients be done in a timely and accurate fashion. Also looking at credentials submitted to the hospital for candidates to any of the various medical groups in the hospital. Physicians on the hospital staff.

Q. Any other functions, as you know them?

A. I'm sure there were, I don't recall off the top of my head.

Q. Did you ever request -- strike that one. Did there come a time when your committee was asked to review a hospital chart identified as Scott Lillian, a 9 year old child on whom I had performed a surgical procedure?

MR. TIMMONS: The activities and the conduct of that committee are privileged under the Florida statute as construed by the Florida Supreme Court, and I'm instructing Dr. Raskin not to answer that question or any other question regarding the

activities of that committee.

MR. FELDMAN: I can ask him if -- I can not ask him what took place within the 4 walls but I can certainly ask him if the committee reviewed that issue.

MR. TIMMONS: I disagree, Dr. Feldman, and I am concerned about an inadvertent waiver of the privilege. We certainly don't intend to inadvertently waive the privilege. I think it's close enough that I'm going to instruct Dr. Raskin not to answer the question.

MR. FELDMAN: Well I'll give you a blank non-waiver of privilege. Are you still instructing him not to answer that?

MR. TIMMONS: Yes, sir.

MR. FELDMAN: Certify it.

Q. Was the medical record and audit committee empowered to ask individuals to appear before it when any chart on any patient came into question?

A. I believe it was.

Q. Would you expect that the individuals who appeared before that committee would tell the truth?

MR. LEWIS: Object to the form.

A. That calls for a conclusion. I don't know that I'm really --

Q. Does the committee expect people who come before it to tell the truth?

MR. LEWIS: Object to the form. Calls for speculation.

Q. Either they're going to lie or they're going to tell the truth. What was your understanding of the people who came before that committee on any chart?

A. On any charges, some did lie, and some did tell the truth.

Q. How did you find out those people lied?

A. Because I knew the individuals involved, and I know the quality of the medicine that they practiced.

Q. Now, Dr. Raskin, during the, one of the phone conversations that you and I had, did I tell you I would send you some documents that were the subject of this lawsuit.

A. Yes, sir.

Q. And did I do that?

A. You did.

Q. And I want to show you a series of documents and ask you if you recall receiving these documents from me?

MR. FELDMAN: Counsel?

I want you to mark the first page and the page that Dr. Raskin read.
(Conversation held off the record.)

(Plaintiff's Exhibit Number 2 and 3 marked.)

Q. Dr. Raskin, I'd like you to review the document I've just handed you and ask you if those are the documents you recall receiving from me?

A. Yes, they are.

Q. What did you do after you reviewed these documents?

A. You called me again, that's right, you called me again, and we just briefly discussed the records themselves.

Q. Do you recall anything that I asked you specifically?

MR. TIMMONS: If we're trying to back into the privilege here I'm going to assert it. That package of documents which is yet to be marked appear to me to consist of records, minutes, proceedings, and letters pertaining to the committee activities which are absolutely privileged under the statues of the Supreme Court decision, and I'm instructing Dr. Raskin not to answer any questions regarding the contents or nature of those documents whether he's asked a specific affirmative question or asked to, excuse me, to affirm or deny a statement made to him.

MR. FELDMAN: You can object as, you're free to object as we go through them but we are going to go through them.

Q. Do you recall the content of the telephone conversation

you just started to relate?

A. I do.

Q And what was the content of the conversation?

A. We discussed these documents.

Q. And specifically did you, do you recall me asking you whether or not the words on document C-4b, on your stationery, were composed by you?

A. As I recall I told you then that I don't recall if the wording was mine or not, or whether the committee secretary sent this letter out.

Q. I see. Do you not recall telling me that the orthopedists actually composed this as you would not have known the language, as a neurologist?

MR. TIMMONS: Asserting the privilege and instruct the doctor not to answer any more questions along this line.

MR. FELDMAN: Will you certify all these, everything that he is instructed not to answer, I would like certified.

Q. Did Parkway Hospital have your stationery on which to write documents, on which to write letters and send out over your name?

A. Yes. On behalf of committee business they might well have.

Q. And the same is true at North Miami General?

A. That I don't remember.

Q. Okay. In the left-hand column, there is the notation RBR/bsd. I assume RBR is Robert Raskin, and your middle name is?

A. Benjamin, that's correct.

Q. Who is bsd?

A. I don't know.

Q. Okay. Do you recall whether or not bsd was a secretary of yours.

MS. SOLARES: Objection, asked and answered.

A. Yes, I did have a secretary with those initials.

Q. Whose name was?

A. Betty Donnechie, D-o-n-n-e-c-h-i-e.

Q. Any idea where she might be?

A. She moved out of Miami some years back, I don't know where she is.

Q. I refer you to document C-3 -- excuse me, going back to C-4b, do you recall whether or not you actually signed that document?

A. There is no signature --

MR. TIMMONS: Doctor, I am not going to let you answer any more questions about these documents, about the merits or the substance of the documents. I am asserting the privilege on your behalf as your lawyer. If you want me to stay here and do that

I'd be glad to do that, if you want to discharge me, you can discharge me, but if I'm here, I'm going to assert the privilege on your behalf. Is that your desire?

THE WITNESS: Yes.

MR. TIMMONS: Thank you.

Q. Document C-3, a letter from, a letter to a Dr. Jerome Moskowitz from you. The initials at the bottom are JB, do you recall who JB is?

MR. TIMMONS: Same instruction, Doctor.

Q. Doctor, in 1975, did you know what a Silastic implant was?

A. No.

Q. Did you know what it was in 1976?

A. No.

Q. 1977?

A. The exact -- I still don't know what it is. So the years are of no import.

Q. Did you know in 1975 what a penile implant was?

A. I don't know.

Q. Same through '76, '77, '78?

A. When I became aware of what their function was and what they looked like I can't tell you, I don't recall what year.

Q. Okay. I want to, I want you to go if you would, please,

to document A, and have you read that if you would, please. It is a letter written to you from Joel Dennis, chairman of the department of orthopedic surgery. He's writing to you as chairman of the medical audit and record committee.

MR. FELDMAN: Counsel, I assume you'll object.

MR. TIMMONS: Yes, as you know there is a privilege of all the activities and records and proceedings of the audit committee, as a peer committee, and we of course are asserting that privilege as I've already told you.

MR. FELDMAN: I want on the record the fact that these documents were produced to me as the direct order of a federal judge, and that as such they are not privileged.

Q. I want you, if you would please, sir, to go to document C-5. Dr. Raskin, do you know who Dr. Charles Weiss is?

A. No, sir, I don't.

Q. Have you ever in your life outside of a committee talked to him?

A. I have no recollection of him.

Q. Have you ever in your life talked to him at all on any occasion?

A. I don't recall if I did.

Q. I'm going to ask you a series of questions, Dr. Raskin.

I recognize that your counsel has objected, and has instructed you not to answer. Nonetheless for the record, it's important I ask you these questions in the event that the Court, that the Judge on reading this, these questions, orders that you answer these questions.

Document A says that the orthopedic department has gone on record as opposing experimental podiatric type procedures such as the placing of a penile Silastic implant for treatment of flexible valgus flat feet. Does that not indicate that the entire penile implant was placed in the joint of a foot?

MS. SOLARES: Objection, leading.

MR. FELDMAN: Your objection is noted. I know he will not answer any of these questions.

MR. TIMMONS: I guess for the record, so there is no uncertainty here, we do consistently assert the privilege, number 1. And number 2, Dr. Raskin of course is a neurologist, he's not a surgeon, and I don't think he knows the answer to most of them. But in order to save time, as Dr. Feldman goes through to preserve the record and ask the questions, I'm instructing you not to answer them, okay?

THE WITNESS: (Witness indicating.)

Q. Document B, the medical records and audit committee March 3, 1977. Dr. Raskin read the responses received regarding queries sent by the committee regarding an experimental procedure performed by a podiatrist. I would ask you, Dr. Raskin, if you composed the words to that query?

MR. TIMMONS: We assert the privilege.

MR. FELDMAN: In order to speed this up, I recognize that every question will be objected to and he can't answer, and I'll just frame the questions. And then we'll just go through it. I'll give you the blanket privilege -- I won't give you -- I don't agree to the privilege but I recognize you're going to make it, you've already instructed him not to answer, and I'm making a record.

MR. TIMMONS: Fine.

MR. FELDMAN: Okay.

Q. In 8 hospitals polled, name the hospitals, Dr. Raskin, the treatment has not been allowable procedure. Our own orthopedic department has gone on record as opposing the treatment which involves placing of a Silastic implant sub-talar joint bilateral for diagnosis of flexible valgus flat foot. It was recommended that the matter be discussed with the doctor involved.

Dr. Raskin was I ever, did I ever appear before your committee or any committee in which you participated or were chairman dealing with the subject matter of this Silastic implant?

MR. FELDMAN: You'll certify all of these questions?

Q. On document C-1, let's see - strike that, before document C-1. Dr. Raskin, to your knowledge was I ever asked about the procedure or the hearing process to your knowledge, was I ever invited to appear before any committee to your knowledge? Did the orthopedic surgeons represent to you that they had in fact asked me about the procedure when in fact they had not, in effect that the orthopedists who brought this accusation lied to the committee?

Okay. Now we go to document C-1. On the communications section, Dr. Raskin, the executive committee passed the bylaw that Silastic implants such as the one cited should not be allowable procedures by podiatrists in this hospital. Now, Dr. Raskin, did you know that the orthopedist surgeons kept the procedure for themselves?

Did you know that under this bylaw orthopedic surgeons could perform the procedure but podiatrists could not?

Dr. Raskin, if the procedure was experimental, could you explain why orthopedic surgeons were allowed to experiment on children and podiatrists were not?

Dr. Raskin -- Dr. Raskin --

MR. FELDMAN: You may allow him to answer this one.

Q. With respect to your knowledge of Parkway's bylaws, hospital procedure, rules and regulations, if a doctor was found to be performing experimental surgery on children, what is the process by which that doctor, or that charge would be brought through the various committees of the hospital?

MR. TIMMONS: You can answer that question.

A. Someone would have to blow the whistle, notify first of all the surgical committee, go to the chairman of the department of surgery, who in turn would bring this either to the ethics committee or medical audit committee, and medical records and audit committee.

Q. You said the chairman of the department of surgery would bring it to who?

A. Yes.

Q. Bring it to who?

A. The chairman of the department of surgery would then notify either the ethics committee or the medical records audit committee, or executive committee,

depending on what his feelings were at the time.

Q. And isn't or is it fair to say that -- strike that. Were you ever contacted by the department of surgery, the chief of surgery with respect to this procedure?

MR. FELDMAN: Counsel?

MR. TIMMONS: If you're asking him his capacity as a committee member I instruct the doctor not to answer because we assert the privilege.

Q. Were you ever contacted by any orthopedist with respect to this procedure?

MR. TIMMONS: Same response.

Q. Parkway Hospital, neither Parkway nor -- is it fair to say that neither Parkway nor North Miami, since you were on the Parkway -- strike that, let me rephrase the question.

With respect to Parkway, is it fair to say that Parkway Hospital would not allow a surgeon to experiment on children?

MR. FELDMAN: Counsel?

MR. LEWIS: I'm going to object to the form as to what is fair to say. He's not in a position to speak for Parkway.

MR. TIMMONS: I guess my problem with that is the doctor is a neurologist so he does not have the technical training and information and knowledge

about a surgical procedure, so I assume that the only way he'd have a knowledge or belief or understanding would be as a member of that records and audit committee, and anything he obtained through that committee or course is privileged and we assert the privilege. So, Doctor, don't answer.

Q. Doctor, if a neurologist was accused of performing experimental procedures on children, would the hospital suspend his privileges immediately until the matter was resolved?

MS. SOLARES: Object, speculation.

MR. FELDMAN: He can answer. It's not --

MR. TIMMONS: I'm not raising the privilege.

A. It would depend on the circumstances. Each case would have to be handled on its own merits.

Q. So do you envision a circumstance where a neurologist is accused of performing experimental procedures on children, and his privileges not being suspended by the chief of neurology, until the matter was resolved?

A. Again, it depends on the nature of the procedure. If it was a rather benign procedure, one that's not been validated clearly in the minds of other currently practicing neurologists we would probably let him do it until we could be darn sure it was or was not an experimental procedure.

Q. Thank you, Dr. Raskin. Would the neurologist be afforded a hearing before either the chief of neurology or the committees at a hospital to determine whether or not such a procedure was experimental?

MR. LEWIS: I'm just going to object -- go ahead.

MS. SOLARES: Improper predicate and speculation, you haven't established for the record that he would know what the procedure would be. You know, he's been saying I assume, I may.

MR. LEWIS: Then you're also using a hypothetical. I don't know if you're applying it to Parkway Hospital or some other institution.

MR. FELDMAN: We've only been talking about Parkway, that's been established.

MR. LEWIS: I don't know if it's clear in his mind.

Q. To be clear, Dr. Raskin, I'll rephrase the question. With respect to Parkway Hospital as you understood it as a neurologist, would a neurologist accused by anyone of doing experimental, neurological procedures on children, be asked about the procedure?

A. If it came to the attention of one of the committees, any of the committees that I named previously, a letter would generally be sent to the physician, notifying him

of the charges made against him. Notifying him at the same time that he had a privilege of a hearing before this committee to discuss the charges.

Q. And that's normal procedure, is it not?

MR. LEWIS: Object to the form.

A. Based on my not always accurate memory, I would say yes.

Q. With respect to North Miami General Hospital, the same procedures, as you understood them?

A. Speculation again, I don't recall the bylaws, but I would expect they were the same.

Q. Thank you, sir. Do you have any knowledge about whether I was in fact asked by any committee or anyone to discuss this procedure and its rational, its treatment?

MR. FELDMAN: Counsel?

MR. TIMMONS: We're asserting the privilege.

Q. Document C-2, Dr. Raskin. Medical record and audit committee, the recommendation that Silastic implants should not be allowable procedures by podiatrists in the hospitals was discussed and approved.

To your knowledge, Dr. Raskin, would that -- strike that. I want you to assume for the purposes of this question, that I have privileges to perform this procedure at Parkway Hospital on April 11th, 1977, Silastic implants, the recommendation that Silastic implants should not be allowable procedures by

podiatrists in the hospital was discussed and approved. Dr. Raskin, wouldn't that, as of April 11th, 1977, remove my privileges to perform that procedure in Parkway Hospital?

MR. FELDMAN: Counsel?

MR. TIMMONS: Same, we assert the privilege.

Q. Dr. Raskin, at the medical records and audit committee, as well as the other committees that you served on both at North Miami General and at Parkway, is it true that in addition to physicians on those committees, there were other individuals who were non-physicians?

MR. FELDMAN: Counsel?

MR. TIMMONS: Assert the privilege.

Q. With respect to committees that you did not serve on, Dr. Raskin, as best you remember the bylaws, rules and regulations of Parkway and North Miami, do you recall physicians and non-physicians being on various hospital committees?

MR. FELDMAN: Counsel?

MR. TIMMONS: You're asking him a question about his understanding of the bylaws. He may answer if he knows.

A. I'm sorry, would you repeat the question?

Q. Yes. As you understood the bylaws that, and rules and regulations at Parkway and at North Miami General, is it

true that physicians and non-physicians served on various committees, nurses, administrators?

A. Correct.

Q. With respect to the medical records and audit committee, the non-physician members would have heard that I was accused of doing experimental surgery on a child with respect to this procedure?

MR. TIMMONS: We assert the privilege..

MR. LEWIS: Outside the privilege, object to the form, it calls for speculation.

Q. Document C-4. This letter dated February 17th, 1977, on your stationery, Dear Doctor, and the doctor, after the doctor it is blank, at the bottom it says chairman department of surgery, Miami School of Medicine. I'm chairman of the medical records and audit committee of Parkway General Hospital, North Miami Beach, Florida. Dr. Raskin, I've already asked you if you composed this letter to your secretary without any outside input or was this letter composed by the members of the orthopedic department?

MR. TIMMONS: That letter is part and parcel of the operation and workings of the committee and the privilege is asserted.

Q. Dr. Raskin, the committee in an effort to evaluate this procedure sent letters to various hospitals and

individuals around the United States, is that true?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. With respect to the letter of February 17th, the second paragraph, the orthopods question the ethics of performing this experimental or thus far unproven procedure by a podiatrist. Were those your words?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Doctor, in you opinion, if you were chairman of the department of surgery and you received this letter stating that the orthopods question the ethics of performing this experimental or thus far unproven procedure by a podiatrist, how would you have responded?

MR. FELDMAN: Counsel?

MS. SOLARES: I am going to object. It calls for speculation.

MR. TIMMONS: Could you read that back for me?

(Record read.)

MR. TIMMONS: My concern with that question is I think it backs into the committee's activities because I think it was a committee activity, whatever happened I think was with respect to the committee, because of course Dr. Raskin would have nothing to do with the surgical procedure being a

neurologist. So because I'm concerned about inadvertent waiver of that privilege I am going to assert it for the Doctor.

Q. Dr. Raskin, the -- if the committee's function was to ascertain whether or not the procedure was experimental, or unproven, would it matter whether it was performed by a podiatrist or an orthopedist?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. If you prefer, in the second paragraph, your comments will be anonymous. Did you receive a call from the chairman of the department of surgery with respect to this letter?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. With respect to -- or, Dr. Raskin, how many letters were sent in total to various entities around the United States?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. C-4b is to be the Department of Surgery, University of Miami School of Medicine, C-4c is to Rollins Hanlon, M.D., director of American College of Surgeons, I note they are the same letter. Were there any others sent?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. With respect to this procedure, C-4d, as in David, did you get a telephone call from Dr. Hanlon about this procedure?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, were you on the executive committee in 1976 at Parkway?

A. I don't know. I do not recall what my period of serving on that committee was.

Q. Dr. Raskin, did you ever talk with any doctor at North Miami General about me, or North Miami General Hospital?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, were you ever told that 2 of the orthopedic surgeons who are defendants in this lawsuit, witnessed me doing the procedure at Parkway General Hospital?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Were you ever told by one or either of those orthopedic surgeons that during the course of the surgery, they were in the operating room with me a sum total of 5 minutes?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Were you ever told that I offered to explain to them what I was doing and why at the time I was doing the surgery?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, were you ever make aware by anyone that I had in fact privileges at Parkway to do this procedure?

MR. TIMMONS: We assert the privilege.

Q. Do you recall my telling you that I had privileges to do this procedure at Parkway?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Do you recall my telling you that on one or more of the telephone conversations that we had that led us to this trial testimony here today?

MR. FELDMAN: Counsel?

MR. TIMMONS: He can answer.

A. Yes.

Q. And when was that?

A. I don't recall which of the 3 or more phone conversations we had over the past week or 10 days, but one of them.

Q. Dr. Raskin, to your knowledge are orthopedic surgeons at Parkway, during the time you were there, allowed to do experimental surgery on children?

MR. FELDMAN: Counsel?

MS. SOLARES: Object to form.

MR. TIMMONS: We assert the privilege.

Q. Same question, North Miami General.

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, to your knowledge, were neurologists allowed to do experimental surgery -- pardon me, were neurologists allowed to do experimental procedures on children at Parkway during the years that you were at Parkway?

MS. SOLARES: Object to the form.

MR. FELDMAN: Counsel?

MR. TIMMONS: He's asking you as a neurologist, not as a member of any committee.

A. Neurologists don't do surgery of any type.

Q. Excuse me, I clarified that to procedures, not surgery.

A. That were considered experimental?

Q. Yes, sir.

A. The term experimental really out of context has very little meaning. We did things that were not widely accepted, that's done in virtually every specialty and subspecialty. It may take 5, 10 years before a procedure gets validated in the literature.

Q. Thank you, sir. Dr. Raskin, were you ever aware of the Florida law which governs the anatomical limitation of

treatment in the State of Florida by a podiatrist?

MR. TIMMONS: We assert the privilege.

Q. To your knowledge, did you know that podiatrists can do any procedure on a human being from the tibia tubercle to the tip of the toes?

MR. LEWIS: Object to the form.

MR. TIMMONS: You can answer if you know.

A. I have no idea.

Q. With respect to the phone conversations that we had together, and we've talked about at this deposition, do you recall relating to me your impression of what the real reasons behind these accusations against me were?

MR. LEWIS: Object to the form.

MR. TIMMONS: I assert the privilege on behalf of Dr. Raskin.

Q. Do you recall telling me that the real reason was, or your impression was, that I was a threat, an economic threat to the orthopedists, and that was the real reason behind this?

MR. LEWIS: Object to form.

MS. SOLARES: Object to form.

MR. TIMMONS: Assert the privilege.

Q. Do you recall my asking you on what basis you had that impression?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Do you recall you telling me that you had no specific time or place of meeting or words, but that it was your impression that all of the accusations against me came from the orthopedic surgeons because I was an economic threat, just in the series of times you were at Parkway?

MS. SOLARES: Object to the form.

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Doctor, as you understand the bylaws of Parkway, whose responsibility is it to see that the doctor gets the hearing procedures outlined in the bylaws?

MR. FELDMAN: Counsel?

MR. TIMMONS: Dr. Raskin, he's asking you about your knowledge of the bylaws of Parkway back in 1970's.

MR. FELDMAN: During this, this is during the pendency of time he was at Parkway.

MR. TIMMONS: Okay.

A. I have no recall as to what the bylaws stipulated on that account.

Q. Would you have any idea what committee or whose responsibility it is to see that the procedures are followed?

A. It would depend on the specific procedures involved. If

you are talking about procedural matters or --

Q. Yes, sir procedural hearing matters.

A. They would first go to the department that you belonged to. In your case it would be the department of surgery.

Q. And then?

A. Then ultimately to medical records and audit.

Q. And whose responsibility is it to see that those levels of hearings are carried out?

A. I don't know that I know the answer to that. I don't know where the executive committee fits in there.

Q. Thank you. In the documents that we read, you suggested, and I want to get the words exact here. There was one document which came out of your committee that said it is suggested that the procedure be discussed with the doctor, or the case be discussed with the doctor involved. Whose responsibility is it to see that that in fact took place?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. This is -- that question related to the medical records audit committee, March 3, 1977, which is document B in this. Just to be clear for the record, who was responsible to see that that recommendation was carried out?

MR. TIMMONS: We assert the privilege.

Q. Do you know whether or not it was ever done?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, do you know how soon after I did the procedure on the child, the first hearings were held?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, did your committee write to any podiatry institutions?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Were any podiatrists consulted about the procedure?

MR. TIMMONS: We assert the privilege.

Q. Doctor, as you understood the bylaws at Parkway, through the credentialing process, did neurologists, did the chief of neurology review the application of a neurologist who was applying for hospital privileges?

MR. TIMMONS: You can answer that.

A. Yes.

continues

Q. And to your knowledge, the chairman of the department of neurology would recommend what specific procedures the neurologist could perform or could not perform?

MR. LEWIS: Object to the form.

MR. FELDMAN: Counsel?

MR. TIMMONS: He can answer.

A. Yes.

Q. Did neurology delineate, as far as you understand it.

did the chief of neurology or the neurology department delineate privileges to the section -- well actually there was no department of neurology, or was there a department of neurology at Parkway?

A. No. It fell under internal medicine.

Q. What other specialties were under internal medicine?

A. Endocrinology, gastroenterology.

Q. Would the chief of neurology delineate privileges to a gastroenterologist?

A. No.

Q. Or to any other specialist outside of his own?

A. No.

Q. Was it your understanding of the Parkway bylaws that orthopedists delineated to orthopedists, and neurologists to neurologists, etcetera?

A. I would have to believe that was the way it was set up.

Q. Were you aware with respect to my application that the orthopedic surgeons attempted to block my -- strike that, let me rephrase the question.

Were you ever aware that I applied to Parkway Hospital for surgical privileges in 1974, on or about '73, '74?

MR. TIMMONS: If you can answer that question outside of any knowledge you obtained in the peer review process, you can answer.

A. No.

Q. Were you aware that the orthopedic surgeons made a, what I would characterize as a vociferous effort to keep me from being granted surgical procedures?

MS. SOLARES: Object to form.

MR. TIMMONS: We assert the privilege.

Q. Were you ever aware that over the objections of the orthopedic surgeons, I was granted privileges by the board of trustees based on my credentials?

MS. SOLARES: Object to form.

MR. TIMMONS: We assert the privilege.

Q. At the committee meetings or at any portion -- strike that, let me rephrase it. During the period of time that you or your committee evaluated this procedure, or the controversy that caused us to be here, were you ever made aware that this was an orthopedic procedure first devised in 1928 by an orthopedic surgeon in France?

MR. TIMMONS: We assert the privilege.

Q. I am going to show you an article and ask you if you have ever seen this or was this ever brought to the attention of the committee?

MR. FELDMAN: Excuse me, I have to give it to the lawyers first. Counsel?

MR. TIMMONS: While we're looking at this can we have a one-minute break?

MR. FELDMAN: You can have a 20-minute break.

VIDEO OPERATOR: We're off the record at 10:19 a.m.

(Whereupon a short recess was held.)

VIDEO OPERATOR: We're on the record at 10:26 a.m.

MR. FELDMAN: Counsel?

Q. I'll show you this article, "Artrorise of the Foot" by a physician whose name I can not pronounce from Lyon, France from the Journal of Bone and Joint Surgery in 1928. I'll tell you there are a few pages missing, but I ask if you have ever seen this before.

MR. FELDMAN: Counsel?

MR. TIMMONS: You can answer.

A. No, I have not seen this before.

Q. Thank you, sir. I wanted to show you an article written by Jean LeLievre, I would assume, M.D., in 1970 from Clinical Orthopedics and Related Research, number 70, May/June, 1970, that I represent to you deals with this procedure and ask you if you have ever seen it?

MR. FELDMAN: Counsel?

Q. Dr. Raskin?

MR. TIMMONS: Other than in peer review, Doctor, you may answer.

A. No.

Q. Dr. Raskin, did the orthopedic surgeons during the pendency of your committees bring any individuals to, other than themselves to testify with respect to this procedure?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. At the hearings were you -- was the committee ever presented with any medical literature with respect to this procedure?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

Q. Dr. Raskin, were you aware that during the time that you were at Parkway, I was the only podiatrist who was permitted to do surgical procedures of any kind in the operating theater at Parkway?

MS. SOLARES: Object to form.

MR. TIMMONS: You may answer, Doctor, outside any knowledge you may have obtained through the statutory peer review proceedings.

A. No.

Q. Dr. Raskin, how did you become aware of the fact that I had performed this procedure?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege based on the broadness of the question.

MR. FELDMAN: Based on what did you say, sir.

MR. TIMMONS: That last question, like many of these questions, are broadly based enough so that it could include information Dr. Raskin received outside and inside peer review, and unless the question is more narrowly drawn I'm going to assert the privilege because it will be uncertain as to how he got the information.

Q. Dr. Raskin, were you ever told that I had done this procedure, outside of your meetings in any of the committees that you were on?

MR. FELDMAN: Counsel?

MR. TIMMONS: If you have knowledge of it outside -- we assert the privilege, he is a neurologist, he'd only know as a member of the committee, we assert the privilege.

MR. FELDMAN: Well that's your speculation that he would only know as a neurologist. Had he been told by anyone outside of that hearing room that I had done this operation.

MR. TIMMONS: Well, I guess Judge Turner is going to have to decide alot of these -- is it Judge Turner?

MR. LEWIS: Yes.

MR. TIMMONS: Is going to have to decide alot

of these questions. But my assumption is an orthopedic surgeon or any other surgeon wouldn't be talking to Dr. Raskin as a neurologist about your procedures, he'd be talking to Dr. Raskin about your procedures as a member of a committee and so therefore we're asserting the privilege.

MR. FELDMAN: Well it's nice of you to give him the answers that you'd like him to say --

MR. TIMMONS: I know what his answer is.

MR. FELDMAN: You don't know that that's what is in his head. And I'm asking very simply outside of his function as a committee member was he ever aware that I had done this procedure.

MR. TIMMONS: You can answer that, Doctor, fairly outside of your functions a a committee member. I don't mean just limited in the committee room, but outside of your function as a committee member, if you have any knowledge, you can answer.

A. No, I have no knowledge of that.

Q. When your committee became aware of the fact that I had done this procedure, what did you do?

MR. TIMMONS: We assert the privilege.

Q. Doctor, were you ever told that the actual implant was a one to two-inch portion of Silastic that went into this foot, child's foot.

MR. TIMMONS: We assert the privilege.

Q. Did you give your stationery to the orthopedic surgeons to compose the letters --

--MR. TIMMONS: We assert the privilege.

Q. -- that are the subject of this lawsuit?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

VIDEO OPERATOR: We're off the record at 10:33 a.m.

(Whereupon a short recess was taken.)

VIDEO OPERATOR: We're on the record at 10:34 a.m.

Q. Doctor, I want to pose a hypothetical scenario to you. And then ask you questions based on that hypothetical.

I want to assume that as a neurologist, you were accused of doing an experimental procedure on a child, a procedure to which you had privileges to do, that it in fact was a legitimate neurological procedure. And I want you to further assume that you were accused of doing this experimental procedure on a child and that you were never asked about it, and that your privileges without your knowledge were removed to do it, and that you got no hearings. And that the statements that you had done experimental procedures on a child were spread to other hospitals to which you were applying for

privileges, that you did not get privileges based on this information, that this outrageous lie was sent around the United States about you. I want you to assume that those are, that that is the series of facts that did in fact occur to you. Can you tell this Jury how you would feel about that.

MS. SOLARES: Objection, calls for speculation.

MR. TIMMONS: Doctor, before you answer I am not claiming, asserting the privilege here but let me make something very clear to you. You have taken an oath to tell the truth on the facts and I presume you can be compelled to tell the truth about the facts. But no one an compel you to give opinion testimony or expert testimony unless you so desire. If you desire to give opinion or expert testimony you may do so. If you choose not to, you don't have to and no one can compel you to do so. The choice is yours. It's not a matter of privilege, it's just a matter of no one can force you to give opinion testimony if you don't want to.

A. I'd prefer not to respond to that.

Q. Do you think it would cause you any degree of distress, either emotionally or within your practice life time?

MS. SOLARES: I object.

MR. TIMMONS: Same thing, Doctor. All these

are asking for your opinion which you are free to give or not give as you desire.

A. Yes, the answer is yes to that, it would cause distress.

Q. Would you be angry about having been labeled like that?

MR. LEWIS: Object to the form.

MS. SOLARES: Object.

MR. LEWIS: Relevancy.

Q. Depending on the circumstances of, I'd have to do an awful lot of investigating in order to satisfy myself that, what the rational for the charges were, and I might be angry depending on what I uncovered.

Q. If it ruined your ability to practice neurology to the level that you had been trained, would you be angry about it?

A. Yes.

MR. LEWIS: Same objection as before.

Q. Could you put a dollar value on your career as a neurologist?

MR. LEWIS: Object to the form.

MS. SOLARES: Object to the form.

A. Given enough time and a calculator I could.

continues

Q. Could you put a dollar value on the value you yourself hold with respect to your reputation?

A. No.

Q. No in the sense that it's an immeasurable amount?

MR. LEWIS: Object to the form.

A. It's not a tangible, material amount.

Q. Could you put a dollar value on the stress that you would have endured as the result of the factual outline that I've given you?

MS. SOLARES: Object to the form.

A. No.

Q. Doctor, I'd like you to assume hypothetically that the following facts are true. One, that I had privileges to do this procedure, two, that I had been trained to do this procedure, three, that after I did the procedure, the orthopedic surgeons labeled it as being experimental surgery on children when in fact it was not, that the orthopedic surgeons disliked me because over there objections, I was granted surgical privileges at Parkway. That the orthopedic surgeons who are the defendants in this case, caused the hearing process to proceed as it did without my knowledge through Parkway. That the fact that I had done this procedure has gone from hospital to hospital in Dade County, and Broward County and all over the United States. That it has in fact prohibited me from getting surgical privileges elsewhere.

Given that fact, given that set of facts to be true, I'd like to ask you whether or not you would think

that you or your committee was used rather than told the truth to with respect to what happened?

MR. TIMMONS: Because the hypothetical asserts matters within the privilege we assert the privilege.

MR. FELDMAN: Okay. I have no further questions.

MR. TIMMONS: I have no questions.

MS. SOLARES: I have no questions.

MR. LEWIS: No questions.

VIDEO OPERATOR: We're off the record at 10:42 a.m., end of deposition.

(Whereupon a short recess was held.)

VIDEO OPERATOR: We're on the record at 10:43 a.m., continuation of the deposition.

Q. (by Mr. Feldman) Dr. Raskin, I'm going to show you a portion of the, of testimony given by defendant Dr. Drucker in Federal Case 79-758, this is at page 2565. And I'm referring to lines 22 through 25. Doctor, would you read lines 22-25?

MR. TIMMONS: To yourself, Doctor.

Q. Doctor, did Dr. Drucker ever tell you that he had, or that either Dr. Drucker nor any orthopedists had ever asked me anything about this hearing or these accusations with respect to this procedure?

MR. TIMMONS: We assert the privilege.

Q. Did, according to Dr. Drucker's testimony, no one asked me -- excuse me, according to Dr. Drucker's testimony, at line 22, well question, when being questioned by me, well to your knowledge, did anyone contact me or ask me anything about it. Answer, specifically, no. We did not ask you anything about it.

Did you ever, Dr. Raskin, did you ever know that Dr. Drucker had in fact said that?

MR. FELDMAN: Counsel?

MR. TIMMONS: We assert the privilege.

MR. FELDMAN: No more questions.

VIDEO OPERATOR: We're off the record at 10:47 a.m.

MR. FELDMAN: We went back, we went off the record and then we went back on the record so that the end, the first ending of the deposition was not correct, the second ending is.

VIDEO OPERATOR: End of deposition.

(Deposition concluded.)

(Whereupon after the conclusion of the proceedings, Deposition Exhibits 4 thru 16 were marked at the request of Mr. Feldman.)

CERTIFICATE

State of Michigan)
) ss
County of Barry)

I, Marjorie A. Covey, CSR 2616, Notary Public in and for Barry County, Michigan, do hereby certify that the foregoing deposition of Dr. Robert Raskin was taken before me at the time and place hereinbefore set forth, and that said witness was duly sworn by me to tell the truth and nothing but the truth, and thereupon was examined and testified as in the foregoing deposition appears;

That this deposition was taken in shorthand and thereafter transcribed by me, and that it is a true and correct transcript of my original shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of July, 1990.

_____
Notary Public in and for
Barry County, Michigan

My Commission expires October 17, 1990.